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August 5, 2019

VIA ECF

Hon. Katharine H. Parker
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Daniel Kleeberg, Lisa Stein and Audrey Hays v. Lester Eber, et al.*
Civ. Action No.: 16-cv-09517-LAK-KHP

Dear Magistrate Parker:

As you know, this firm represents the Eber Defendants in the above-referenced action. We write regarding summary judgment motions, expert depositions and the Case Management Conference scheduled for September 10, 2019 at 2:00 p.m.

It is our understanding that the primary purpose of the conference is to discuss scheduling going forward – most notably a briefing schedule for summary judgment motions. However, plaintiffs' counsel has advised that it is his position that any summary judgment motion must be filed on or before September 30, 2019 pursuant to FRCP Rule 56(b).

If our understanding that a summary judgment schedule was to be discussed at the upcoming conference was incorrect, we would respectfully request an extension to file motions for summary judgment to November 30, 2019. Plaintiffs' recently filed Third Amended Complaint is more than 60 pages long and contains ten (10) separate causes of action. In addition, there are numerous deposition transcripts, and thousands of pages of documents that will need to be reviewed in connection with preparing the motion. It is respectfully submitted that the complexity of the issues in this case, and the sheer volume of documents and discovery, warrants a departure from the short time frame set forth in Rule 56(b).

Finally, the parties have exchanged expert reports, but have not yet conducted expert depositions. The deposition of the Eber Defendants' expert, Frank Torchio, is tentatively scheduled for August 23, 2019. The parties are looking at September 11, 2019 to conduct the deposition of plaintiffs' expert, Glenn Liebman. The scheduling order currently provides that expert discovery is to be completed by August 31, 2019, but we are running into difficulties with counsels' schedule. Accordingly, a brief extension of that deadline is requested to complete Mr. Liebman's deposition.



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If the Court is amenable to this brief extension, Mr. Liebman's deposition would take place the day after the September 10th status conference. Given that Mr. Liebman's deposition would be the only remaining discovery, the Eber Defendants see no reason why the September 10th conference cannot proceed as scheduled.

It is our understanding that plaintiffs' counsel will object to an enlargement of the time period to file summary judgment motions. To that end, plaintiffs' counsel has advised that he will only agree to conduct Mr. Liebman's deposition on September 11, 2019 if the Eber Defendants agree that September 30, 2019 is the deadline for filing motion for summary judgment.

However, irrespective of whether Mr. Liebman's deposition is conducted on September 11th or in late August, the turn-around time to review expert transcripts and incorporate the testimony into summary judgment motions would be extremely tight. This is yet another reason why an enlargement of the time period to file summary judgment motions is appropriate.

In the event that the Court intended to discuss a summary judgment schedule during the September 10th status conference, the Eber Defendants are merely seeking permission to conduct Mr. Liebman's expert deposition on September 11, 2019.

Alternatively, if the Court intended for summary judgment motions to be filed on or before September 30, 2019, a two (2) month extension is requested for the reasons set forth above.

Respectfully submitted,

A handwritten signature in blue ink that reads 'Colin D. Ramsey'. The signature is fluid and cursive, with a large 'C' and 'R'. Below the signature, the name 'Colin D. Ramsey' is printed in a black, sans-serif font, followed by a small blue circular mark.

CDR:ar

cc: Brian Brook, Esq. (*via ECF*)
Robert Calihan, Esq. (*via ECF*)
Paul F. Keneally, Esq. (*via ECF*)